IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 116 OF 1998.

M/s.Otis Elevator Co.(India) Ltd. ... Applicant.

V/s.

The Commissioner of Income-tax. ... Respondent.

P.J.Pardiwala i/b Mulla & Mulla C.B.C.
for the applicant.

Ashok Kotangale with Parag Vyas
for the respondent.

CORAM : V.C.DAGA AND J.P.DEVADHAR, JJ.

DATED : 4th October 2005.

P.C. :

. By this reference under section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

Question referred at the instance of the assessee:
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1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that medical expenses reimbursed to the directors of the assessee-company would be a part of Salary while computing the disallowance u/s.40(c) of the Income-Tax Act, 1961?

Question referred at the instance of the Revenue:
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2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing the Income-tax Officer to allow initial contribution to superannuation fund of entire amount of Rs.78,120/-?

. So far as question No.1 is concerned, which is referred at the instance of the assessee, learned counsel for the parties agreed that the said question has already been answered by the Apex Court in the case of **C.I.T. v. Mafatlal Gangabhai & Co.(P.)Ltd.**, (1996) 219 ITR 644 in favour of the Revenue. Accordingly, question No.1 is answered in the affirmative i.e. in favour of Revenue and against the assessee.

. So far as question No.2 is concerned, which is referred at the instance of the Revenue, learned counsel for the parties agreed that this question is covered by the judgment of the Apex Court in the case of **C.I.T. v. Sirpur Paper Mills**, (1999) 237 ITR 41 in favour of Revenue. Accordingly, question No.2 is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

. Accordingly, reference stands disposed of with no order as to costs.

(J.P.DEVADHAR, J.) **(V.C.DAGA, J.)**